IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, CIVIL JURISDICTION

WRIT PETITION NO.2548 OF 2005

Shri Shivaji Shamrao Dharpure,)
Age 52 years, Occ. At present)
Nil being Ex-Civikl Jduge,)
Junior Division, and Judicial)
Magistrate 1st Class, Junnar,)
District Pune)
At present residing at)
Abhinandan Rresidency, D/11,)
Jagtap Nagar, Wanawadi,)
Pune-411 040.)..PETITIONER

Versus

1.State of Maharashtra)
(Summons to be served on the)
Learned Additional Government)
Pleader appearing for the)
State of Maharashtra under)
Order XXVII, Rule 4 of the)
Code of Civil Procedure, 1908)
2.The Principal Secretary,)
Law and Judicial Department,)
Mantralaya, Mumbai-400 032.)
(Summons to be served on the)
Learned Additional Government)

Pleader appearing for the)
State of Maharashtra under)
Order XXVII, Rule 4 of the)
Code of Civil Procedure, 1908)

3.The Hoourable High Court of)
Judicature of Bombay)
on the Administrative Side,)
(Summons to be served on the)
Registrar, General High Court)
of Judicature of Bombay,)
Bombay.)..RESPONDENTS

Mr.Anil V. Anturkar i/b. Mrs.Vinita B. Bakre-Shastry
for the Petitioner
Mr. A.A. Kumbhakoni, Associate Advocate General with
Mr. R.D. Rane, Govt. Pleader for Respnodents.

CORAM: F.I. REBELLO &
MRS.ROSHAN DALVI, JJ.

DATE: 22ND DECEMBER, 2005

JUDGMENT (PER F.I. REBELLO, J.)

. Rule. Heard forthwith.

2. The petitioner had joined the judicial service in the State of Maharashtara on 15th November, 1990 as Civil Judge, Junior Division, A

charge sheet came to be issued against the petitioner pursuant to initiation of Disciplinary Proceedings. An enquiry was conducted. The Enquiry Officer submitted his report on 31st May, 2004. That report came to be placed before the Administrative Committee of the High Court wherein an order came to be passed on 9th July, 2004 directing that the copy of the Enquiry Report should be served on the petitioner and that he be asked to submit his reply. Accordingly a show cause notice came to be issued to the petitioner dated 28th July, 2004 which was received by the petitioner on 31st July, 2004. On 10th August, 2004 the petitioner represented against the show cause notice. That reply came to be placed before the Disciplinary Committee. The Show cause notice with the reply was placed for consideration of the Disciplinary Committee on 10th October, 2004. The Disciplinary Committee decided to reject the representation of the delinquent judicial officer and to accept the findings recorded by the Enquiry Officer. The Disciplinary Committee considering the gravity of the charges proved, was of the opinion that the major penalty of dismissal be imposed on the petitioner herein. The matter was placed before the Disciplinary Authority which decided to accept the recommendations of the Chief Justice and the Judges of the High Court to impose major punishment of dismissal from the service and accordingly the petitioner stood dismissed from the service from the

date of receipt of the order. The order was communicated to the petitioner on 29th November, 2004 and the petitioner was relieved from service on 30th November, 2004. It is this order which is the subject matter of the present petition.

3. At the hearing of this petition on behalf of the petitioner, though there was a faint challenge to the findings, the principal contentions as urged may be set out as under:-

a. It is submitted that the decision to pass the order of dismissal from service could not have been taken by the Disciplinary Committee of Judges, but ought to have been placed before the Full Court for its approval. This was not done and in the absence of approval of the Full Court the order of dismissal could not have been passed.

b. The Full Court, it is submitted, could not delegate its powers to one Committee by abdicating the Constitutional Duty cast on it under Article 235 of the Constitution of India. The decision of the Full Court to delegate its powers to the Committee is illegal and bad in law and consequently the order founded on this delegation.

c. Before passing the order of punishment, there ought to have been consultation with the Maharashtra

Public Service Commission. As there has been no consultation the order of dismissal is illegal and bad in law.

d. Lastly it is submitted that the Disciplinary Authority must take into consideration the record of the enquiry. The order has been passed without taking into consideration the record of the enquiry, more so as the High Court is not the Disciplinary Authority, but it is the Governor who is the Disciplinary Authority.

. The learned Counsel in support of his contentions has relied on the Judgment of the Apex Court in **Registrar,High Court of Madras vs. R. Rajiah vs. (1988) 3 SCC 211,** in the judgment of **High Court of Judicature at Bombay through its Registrar vs. Shirishkumar Rangrao Patil & Anr., (1997) 6 SCC 339** and in the judgment of **Yoginath D. Bagde vs. State of Maharashtra & Anr., (1999) 7 SCC 739**.

4. A reply was filed on behalf of the High Court by Shri J.R. Deshpande, Registrar (Legal) on 25th October, 2005. It has been pointed out that the Enquiry Officer Shri S.B.Savale conducted the enquiry and submitted his report. The enquiry report was placed before the Disciplinary Committee. The Disciplinary Committee in its meeting on 9th July, 2004 after discussing the report directed that a

notice be issued to the Petitioner as to why the findings and reasons recorded by the Enquiry Officer may not be accepted and after considering the representations, if the findings recorded by the Enquiry Officer are accepted why one of the major penalties including penalty of dismissal should not be imposed. Accordingly, a show cause notice was served on the petitioner and he filed reply to the said show cause notice. The reply was placed before the Disciplinary Committee on 12th October, 2004 which took the following decision:-

"Discussed.

Having considered the representation dated 10.8.2004 of the delinquent Judicial Officer in response to the show cause notice and the report of the Enquiry Officer, it was decided to reject the representation of the delinquent Judicial Officer and accept the findings recorded by the Enquiry Officer.

Looking to the gravity of the charge proved, it was decided to impose upon the delinquent Judicial Officer major penalty of dismissal from service as prescribed by Rule 5(1)(ix) of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979."

. Pursuant to the said decision, the matter was forwarded to the Government of Maharashtra. An order thereafter came to be passed in the name of the Hon'ble Governor, imposing the punishment of dismissal on the petitioner by order dated 25th November, 2004 and the same was served on the delinquent Judicial Officer on 30th November, 2004. The petitioner thereafter preferred a Review of the order dated 25th November, 2004. That came to be dismissed. Dealing with the judgment, it is pointed out that the judgment in the case of R. Rajiah (supra) was distinguishable and was not relevant to the facts of the case. It is pointed out that the judgment of Shirishkumar Rangrao Patil(supra) would not support the case of the petitioner in view of the subsequent judgment of the Apex Court in **High Court of Judicature at Bombay vs. Shashikant S. Patil & Anr. Vs. Shashikant S. Patil & Anr., (2000) 1 SCC 416.** It is also pointed out that this Court while exercising the power under Article 226, will not reassess the evidence nor consider the adequacy of evidence relevant. For that reliance is placed on the judgment of the Apex Court in **Union of India v. H.C. Goel, AIR 1964 SC 364.** Reliance is also placed in the judgment in the case of **Kailash Chandra Asthana v. State of U.P. 1988 (3) SCC 600**.

. An additional affidavit came to be filed on 22nd December, 2005. It is pointed out therein that

the Full House of the High Court in its meeting dated 2nd May, 1981 had taken a decision that recommendation of the Disciplinary Committee shall be placed before the Full House of all the Judges. That procedure caused great deal of delay in finalising the disciplinary actions and over a period of of years, number of disciplinary matters increased and in the Full House meeting dated December, 15, 1984 a decision was taken to modify the procedure for imposition of penalties on Judicial Officers.The Full Court decided as under:-

> "The powers of the High Court in respect of the punishment of the Judicial Officer are delegated to a Committee of five Judges to be appointed by the Chief Justice."

It is submitted that this resolution confirms to the exercise of powers of the Full Court under Article 235 of the Constitution. It is pointed out that this power can be exercised either by making Rules or by passing resolutions and in the instant case a resolution has been passed. Such a resolution has been upheld by a learned Bench of this Court in **Chandrakant Venkatesh Moholkar vs. State of Maharashtra & Ors., 2000 (4) Mh. L.J. 793.** It is, therefore, submitted that it was open to the Full Court to have delegated its power to a Committee of Judges of the Court to act on its behalf and such

exercise of delegation would not amount to abdication of the powers of the Full Court rendering such a resolution bad or illegal. On the contrary it has been specifically upheld in the judgment in Chandrakant Venkatesh Moholkar (supra).

5. With the above, the first question that we have to consider is whether the decision of the Disciplinary Committee ought to have been placed before the Full Court. Article 235 of the Constitution of India provides that the control over the District Courts and Courts subordinate thereto shall be vested in the High Court. It is now settled law that the control would include holding of departmental enquiry and imposing punishment other than by way of dismissal and other major punishments which has to be done by the Disciplinary Authority who is the Governor of the State. Considering the judgment in **Shamsher v. State of Punjab, AIR 1974 SC 2192** the power of the Governor in such matters is exercised by the State Government. This control vested in the High Court is a mechanism to ensure independence of the subordinate judiciary. In support of his contention that the decision had to be taken by the Full Court the petitioner has placed reliance on the judgment in the case of R. Rajiah (supra). The issue before the Apex Court where an S.L.P. was preferred by two Judicial Officers, both the Officers were compulsorily retired. The Apex

Court allowed the petitions filed by both the petitioners before it on the ground that there was no material warranting imposition of the order of compulsory retirement. The learned Judges also held that the Committee constituted was illegal and consequently that also vitiated the order of compulsory retirement. On behalf of the Respondent it was submitted that there are Rules framed in the case of Madras High Court which requires that the matter be placed before the Full Court. We have nothing on record in support of that Contention. The fact, however, remains from what is on record that Review Committee was appointed by the resolution of the High Court. In para.24 of the judgment the Apex Court was pleased to hold that the decision of the Review Committee should have been placed before a meeting of the Judges and as recommendation of the Review Committee was not placed before the Full Court, the recommendation of the Review Committee was not legal, based on which the Judicial Officers had been compulsorily retired. We may at once note that in so far as this Court is concerned, the issue is no longer res integra. In the case of High Court of Judicature at Bombay vs. Shirishkumar Rangrao Patil (supra) the Apex Court was pleased to observe as under:-

"It is true that a resolution came to be passed authorising the Committee of five

> Judges to deal with imposition of punishment on judicial officers. The question, therefore, is whether it requires the Chief Justice and the Committee to initiate disciplinary proceedings. The "delegation of the function of the High Court in respect of punishment of judicial officers" is an expression of width and of wide amplitude to cover within its ambit the power to take a decision by the Committee from the stage of initiation of disciplinary proceedings, if necessary, till its logical end, viz. recommendation to the Government to impose a penalty proposed by the Committee. The recommendation is by the High Court, the controlling authority under Article 235 of the Constitution....."

In the case of Yoginath D. Bagde vs. State of Maharashtra and another (supra) the Apex Court was pleased to hold that the observation in Rajiah cannot be accepted considering the later decision in Shirishkumar Rangrao Patil. In paragraph 21 the Apex Court was pleased to observe as under:-

> "We need not look into this question any further. We, therefore, hold that the recommendation to dismiss the appellant made by the Bombay High Court to the Governor

would not be open to challenge on the ground that such a recommendation was made by the Disciplinary Committee and not by the Full Court comprising of all the sitting Judges."

The issue in our opinion stands settled by the judgment in Shashikant S. Patil & Anr. (supra). We may gainfully refer to para.22 of the judgment which reads as under:-

"It is the Full Court of all Judges of the High Court of Bombay which has authorised the Disciplinary Committee of five Judges of that High Court to exercise the functions of the High Court in respect of punishment of judicial officers. Such functions involve exercise of the powers envisaged in Article 235 of the Constitution. It is the constitutional duty of every High Court, on the administrative side, to keep guard over the subordinate judiciary functioning within its domain. While it is imperative for the High Court to protect honest judicial officers against all ill-conceived or motivated complaints, the High Court cannot afford to bypass any dishonest performance of a Member of the subordinate judiciary. Dishonesty is the stark antithesis of judicial probity. Any instance of a High

> Court condoning or compromising with a dishonest deed of one of its officers would only be contributing to erosion of the judicial foundation. Every hour we must remind ourselves that the judiciary floats only over the confidence of the people in its probity. Such confidence is the foundation on which the pillars of the judiciary are built."

. A similar issue had consideration before a Division Bench of the Court in the case of Chandrakant Venkatesh Moholkar (supra) where a learned Division Bench presided over by the learned Chief Justice was pleased to hold as under;-

> "Once resolution is passed by the Full Court no further necessity to refer the matter again to the Full Court while taking procedural steps in disciplinary matters by Disciplinary Committee relating to control of the subordinate judiciary. In exercise of powers vested under Article 235 of the Constitution of India, the High Court,can by a resolution appoint a committee of Judges for disciplinary matters."

. In our considered opinion the issue, therefore, is no longer res integra. The power of

the Full Court can be exercised by the Full Court or can be exercised by a Committee of Judges nominated by a resolution of the Full Court. In the instant case the resolution has been passed and a Committee was constituted in terms of the resolution. Once the committee has acted in terms of the Resolution the decision is on behalf of the Full Court and consequently the first contention as urged before us has to be rejected.

6. We may now deal with the second contention that the Full Court could not delegate its powers to a Committee and if it so does that would amount to abdication of its constitutional duty. It is no doubt true that the power under Article 235 of the Constitution is vested in the High Court. It is now settled law that the expression "High Court" means all the Judges of the Court acting together. The question as posed on behalf of the petitioner is that the constitution having specifically conferred powers on the Full Court it was not open to the Full Court to delegate its powers to a smaller Committee and if it so does it would tantamount to abdicating its constitutional duty. In our opinion this issue is also answered in the judgment in Shirishkumar Rangrao Patil (supra). Para.10 of the said Judgment specifically deals with the said contention. We may gainfully reproduce para.10:-

"10. It would thus be settled law that the control of the subordinate judiciary under Article 235 is vested in the High Court. After the appointment of the judicial officers by the Governor, the power to transfer, maintain discipline and keep control over them vests in the High Court. The Chief Justice of the High Court is first among the Judges of the High Court. The action taken is by the High Court and not by the Chief Justice in his individual capacity, nor by the Committee of Judges. For the convenient transaction of administrative business in the Court, the Full Court of the Judges of the High Court generally passes a resolution authorising the chief justice to constitute various committees including the committee to deal with disciplinary matters pertaining to the subordinate judiciary or the ministerial staff working therein. Article 235, therefore, relates to the power of taking a decision by the High Court against a member of the subordinate judiciary. Such a decision either to hold an enquiry into the conduct of a judicial officer, subordinate or higher judiciary, or to have the enquiry conducted through a District or Additional District Judge etc. and to consider the report of the enquiry

officer for taking further action is of the High Court. Equally, the decision to consider the report of the enquiry officer and to take follow-up action and to make appropriate recommendation to the Disciplinary Committee or to the Governor, is entirely of the High Court which acts through the Committee of the Judges authorised by the Full Court. Once a resolution is passed by the Full Court of the High Court, there is no further necessity to refer the matter again to the Full Court while taking such procedural steps relating to control of the subordinate judiciary."

It was then sought to be submitted on behalf of the petitioner by the learned Counsel, that the issue raised namely abdication of essential constitutional functions was not directly posed. Perhaps it may be possible argue the question as now raised had not been specifically raised in that Judgment. Nevertheless the observation in paragraph 10 would clearly indicate that what the Apex Court was answering is the very question as raised by the petitioner namely whether the Full Court by resolution could delegate its powers to a Committee of Judges or the Chief Justice and if such delegation would amount to abdication of essential constitutional functions. In our opinion the very

issue was under consideration and the issue has been answered by holding that there would be no abdication of the constitutional function by the Full Court passing a resolution authorising the learned Chief Justice or a Committee of Judges either constituted by the learned Chief Justice based on the resolution acting on behalf of the Full Court. The second contention also in our opinion must be rejected.

7. We now come to the third contention that there was no consultation with the Maharashtra Public Service Commission and consequently the order of dismissal is illegal. The power conferred on the High Court under Chapter VI is an independent constitutional power independent of the power in Part XIV which deals with services. Under Article 320 the Powers of the Public Service Commission are set out. Under Chapter VI when the Public Service Commission has to be consulted is so set out, like under Article 234 in the matter of recruitment of persons other than District Judges to the judicial service of a State has to be made by the Governor of the State under Rules made after consultation amongst others with the State Public Service Commission. Such conferment of power would not have been required if Article 320 applied to Chapter VI. As such it is in a limited context of framing rules for recruitment of persons other than District Judges is it required that the Governor should consult the State Public

Service Commission as also the High Court exercising jurisdiction in relation to such State. We are clearly, therefore, of the opinion that when the High Court exercises its control under Article 235 it is in exercise of an independent constituent power, which mechanism has been maintained to ensure the independence of the judiciary and an exercise of independent control by the High Courts over the subordinate Courts. This is because unlike the bureaucracy or the members of the other services the judicial service is not merely an employment nor the Judges merely the employees. They exercise sovereign judicial power of the State. They are holders of public offices of great trust and responsibility. (See Shashikant S. Patil (supra). Like in the instant case an enquiry was initiated by the High Court. The High Court gave its recommendations to the State Government. The order came to be passed by the Governor. The decision of the High Court in such matters is normally binding on the Governor. This mechanism is between the High Court and the Disciplinary Authority. No other body including the Public Service Commission is involved in that exercise. This is to ensure independence of the judiciary, considering the expression "control" under Article 235 of the Constitution of India. We are clearly, therefore, of the opinion that there is no requirement that when an enquiry is conducted in exercise of the power of control under Article 235 of

the Constitution, the Public Service Commission has to be consulted considering the powers of the Public Service Commission under Article 320 of the Constitution of India. The power under Article 320 would be in respect of those services over which the M.P.S.C. would have jurisdiction and not in respect of Chapter VI of the Constitution.

18. The last contention urged was that the Disciplinary Committee must take into consideration the record of the enquiry. We have earlier noted the resolution passed by the Disciplinary Committee at its meeting dated 26th February, 2003. The Committee considered the record of the preliminary enquiry and the explanation submitted by the delinquent judicial officer,the petitioner herein and decided to initiate departmental enquiry. There was a further direction that the draft charge sheet be drawn up and placed before the Committee. The committee on 30th July, 2003 approved the charge sheet and issued various other directions on 12th November, 2003. In answer to the written statement to the charge sheet, the committee decided to proceed to hold the Departmental Enquiry against the petitioner herein. On 9th July, 2004 the Committee specifically noted that it has considered the record of the enquiry and the report of the Enquiry Officer and decided to issue show cause notice to the delinquent Judicial Officer. After opportunity was given to the petitioner the

representation was considered by the Committee and it was decided to reject the representation and considering the gravity of misconduct which was proved decided to impose major penalty of dismissal from service. It is thus clear that at every stage the records were before the committee and before it proceeded to impose punishment of dismissal it had considered every aspect of the matter. In our opinion, therefore, the entire records were before the Disciplinary Committee. We have, therefore, no hesitation in rejecting the last contention urged on behalf of the petitioner.

9. As pointed out earlier it was faintly sought to be contended that the findings are perverse and consequently the entire action of imposing punishment is illegal and void. In the instant case an enquiry was conducted. The petitioner was given opportunity to cross examine the witnesses and examine his own witnesses. Evidence has come on record in respect of the charges levelled against the petitioner. The Enquiry Officer of the rank of Additional District Judge conducted the enquiry and submitted his report. That report was considered by the Disciplinary Committee of Judges and it is pursuant to that the petitioner was given an opportunity of filing his reply. The reply was considered again by the Committee which decided not to accept it and considering the gravity of the misconduct proposed

that the punishment of dismissal be imposed on the petitioner. When such grave charges have been made against the judicial officer and findings have been recorded and five Judges of this Court have unanimously opined that the punishment of dismissal be imposed, it will not be possible in these circumstances for this Court to interfere with that finding of fact recorded by the Disciplinary Committee of this Court on its Administrative Side. We are dealing with the Judicial Officer against whom serious charges of misconduct of abusing his office had been levelled. The faith in the judicial system and the confidence that it enjoys, is because of the high standards that Judges must set for themselves and abide by them, when they accept judicial office. It is not possible to have any errant judicial officer in service whose conduct is unbecoming of the high trust that is placed in him and against whom serious charges of misconduct are proved. In this context the normal standards which would be applicable in case of other public servants cannot be the yardstick for examining the conduct of the judicial officer. The judicial officer is placed on a higher pedestal. In our present day life when impropriety has become the rule, we as Judicial Officers must set high standards in our private and public life to enable others in charge of the destiny of the Nation to follow and/or emulate. Apart from that, in the instant case the witnesses have deposed

against the petitioner and the enquiry officer accepted the evidence of the said witnesses as being credible. The learned Judges on the Administrative Side have accepted the said report. We, therefore, find no reason to interfere with the said findings and the action taken by way of dismissal from service.

10. In the result petition dismissed. Rule discharged. In the circumstances of the case there shall be no order as to costs.

(F.I.REBELLO,J.)

(MRS. ROSHAN DALVI, J.)